

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

PATRICIA CHAMPION

VS.

WAL-MART STORES TEXAS, L.L.C.,
WAL-MART REAL ESTATE BUSINESS
TRUST D/B/A WAL-MART SUPERCENTER
#2599, WAL-MART REALTY COMPANY,
AND CHARLES RODRIGUEZ

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C.A. NO. 5:16-
cv-112

JURY DEMANDED

NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441

TO THE CLERK OF THE ABOVE ENTITLED COURT:

Please take notice that Defendants, Wal-Mart Stores Texas, L.L.C., Wal-Mart Real Estate Business Trust d/b/a Wal-Mart Supercenter #2599, Wal-Mart Realty Company and Charles Rodriguez, hereby remove to the Court the state action described below.

1. On November 23, 2015, a civil action was commenced, in the 37th District Court of Bexar County, Texas, entitled *Patricia Champion vs. Wal-Mart Stores Texas, L.L.C., Wal-Mart Real Estate Business Trust d/b/a Wal-Mart Supercenter #2599, Wal-Mart Realty Company and Charles Rodriguez*, Cause No. 2015CI19515. A copy of Plaintiff's Original Petition is attached hereto as **Exhibit A**.

2. Service of summons and complaint was made on Defendants, Wal-Mart Stores Texas, L.L.C., Wal-Mart Real Estate Business Trust d/b/a Wal-Mart Supercenter #2599, Wal-Mart Realty Company by serving their registered agent, C.T. Corporation System, by process server on January 12, 2015. Service of summons and complaint was made on Defendant, Charles Rodriguez by process server on January 12, 2015. Attorneys for Defendants first received a copy of said Petition on January 16, 2016. A copy of the Citations are attached hereto as **Exhibit B**.

3. Defendants have filed an Answer, attached as **Exhibit C**, an Application for Jury Trial, attached as **Exhibit D**, Special Exceptions, attached as **Exhibit E**, and a Notice of Filing of Removal to Federal Court, attached as **Exhibit F**. Defendants have attached all process, pleadings, and orders in the State Court action as required by 28 U.S.C. 1446(a).

4. Defendants have attached a copy of the docket sheet, **Exhibit G**.

JURISDICTION AND VENUE

A. Standard

5. The action is a civil action of which this Court has original jurisdiction under Title 28 U.S.C. § 1332 (Diversity Jurisdiction), and is one which may be removed to this Court pursuant to Title 28 U.S.C. § 1441. There is complete diversity of citizenship amongst the parties. Defendant, Wal-Mart Stores Texas, LLC is a Limited Liability Company formed under the laws of Delaware, with its principal place of business in Arkansas. Defendant, Wal-Mart Real Estate Business Trust is a statutory trust formed under the laws of the State of Delaware. The sole trustee for this statutory trust is Wal-Mart Property Co., a corporation incorporated under the laws of the State of Delaware, with its principal place of Business in the State of Arkansas. Defendant Wal-Mart Realty Co. Is a corporation incorporated under the laws of the State of Arkansas with its principal place of business in the State of Arkansas. Plaintiff is a Texas citizen.

6. The amount in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs. Plaintiff has pled that her damages are “over \$1,000,000.00.” (See Plaintiff's Original Petition, pg. 9 attached hereto as **Exhibit A**).

7. Venue is proper in the Western District of Texas, San Antonio Division because this district and division embrace the place in which the action is pending.

B. The Improper Joinder of the Wal-Mart Employee does not Defeat Diversity

8. Charles Rodriguez, a manager at the Wal-Mart store where the alleged incident

occurred, is a Texas citizen, with his residence in Bexar County, Texas.

9. At the time suit was filed, and at the time of this removal action, Charles Rodriguez was an employee of Wal-Mart serving as a manager of Wal-Mart store #2599, located at 5555 De Zavala Road, San Antonio, Texas 78249.

10. The citizenship of Wal-Mart's manager, Charles Rodriguez, should be disregarded for diversity purposes because he has been improperly joined in this suit. Plaintiff alleges that Defendants breached their duty of care in their failure to "use ordinary care in the safety of PLAINTIFF..." (See Plaintiff's Original Petition, pg. 3 attached hereto as **Exhibit A.**)

11. However, there is no possibility that the Plaintiff can establish a cause of action against Wal-Mart's manager, Charles Rodriguez, and as such, his in-state citizenship should be ignored when determining diversity jurisdiction. See *Smallwood v. Ill. Cent. R.R. Co.*, 385 F.3d 568, 573 (5th Cir. 2004); *Carriere v. Sears, Roebuck and Co.*, 893 F.2d 98, 100 (5th Cir. 1990); *B. Inc. v. Miller Brewing Co.*, 663 F. 2d 545, 549 (1981).

12. Further, there have been no allegations, and the facts do not support, that Wal-Mart's manager, Charles Rodriguez owes the Plaintiff any independent duty of reasonable care apart from that duty owed by his employer, Wal-Mart, and as such, there is no reasonable possibility of recovery against him as manager. See *Chon Tri v. J.T.T.*, 162 S.W.3d 552, 562 (Tex. 2005); *Leitch v. Hornsby*, 935 S.W. 2d 114, 117 (Tex. 1996); *Gipson v. Wal-Mart Stores Texas, LLC*, 2008 WL 4844206 (S.D. Tex.) (holding that employee did not owe a customer a duty of reasonable care independent from the duty owed by the employer); *Allen v. Home Depot U.S.A., Inc.*, SA-04-0CA703XR, 2004 WL 22700001 (W.D. Tex. Oct 6, 2004) (holding that there was no possibility of recovery against manager for negligent supervision claim). Various Federal District Courts have also held that joinder of a retailer's manager was improper because the manager did not owe an independent duty of care to customer.

13. Finally, the joinder of Charles Rodriguez in this suit is simply for the purpose of defeating diversity jurisdiction and there is no basis in Texas law for his joinder.

II. CONCLUSION

14. Plaintiff has no reasonable basis of recovery under Texas law against the Wal-Mart Employee in his individual capacity. Therefore, because the Wal-Mart Employee, Defendant Charles Rodriguez, has been improperly joined as a Defendant in this lawsuit, his citizenship should not be considered by the Court in determining whether complete diversity exists in this case. If his citizenship is properly disregarded, it cannot be disputed that complete diversity exists between the other parties for removal purposes. Further, in the alternative, Plaintiff should be required to show the Court that he is either a legal citizen of Texas or "an alien admitted to the United States for permanent residence" as required by 28 U.S.C. 1332(a) in order to show that he in fact should be considered a citizen of the State of Texas. If she cannot do so, then complete diversity of the parties exists regardless of whether it is found that the Wal-Mart Employee has or has not been improperly joined in this case. For these reasons, this case has been properly removed to this Court from the 37th Judicial District Court, Bexar County, Texas, based on diversity jurisdiction.

Dated: February 1, 2016.

Respectfully submitted,

DAW & RAY, LLP

Willie Ben Daw, III

Willie Ben Daw, III; TBN: 05594050

Email: wbdaw@dawray.com

James K. Floyd; TBN: 24047626

Email: jfloyd@dawray.com

14100 San Pedro Ave., Suite 302

San Antonio, Texas 78232

(210) 224-3121 Telephone

(210) 224-3188 Facsimile

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the above and foregoing instrument has been served upon all known counsel of record by Facsimile on this the 1st day of February 2016.

Thomas J. Henry
THE LAW OFFICES OF THOMAS J. HENRY
521 Starr Street
Corpus Christi, Texas 78401

Via Fax: (361) 985-0601

Willie Ben Daw, III
Willie Ben Daw, III

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**INDEX OF DOCUMENTS FILED
WITH REMOVAL ACTION**

- (A) Plaintiff's Original Petition
- (B) Citations
- (C) Defendants' Verified Original Answer
- (D) Defendants' Application for Jury Trial
- (E) Special Exceptions
- (F) Notice of Filing of Removal to Federal Court
- (G) Docket Sheet
- (H) List of Counsel of Record